

\$ 1700
PATENT 2005



Practitioner's Docket No. U 014861-2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re application of: Goran SUNDHOLM
Serial No.: 10/688,859
Filed: October 17, 2003
For: FIRE-FIGHTING INSTALLATION AND DRIVE SOURCE OF FIRE-FIGHTING INSTALLATION
Group No.: 3752
Examiner: C. S. Kim

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF APPEAL BRIEF (PATENT APPLICATION—37 C.F.R. 41.31)

NOTE: The phrase "the date on which" an "appeal was taken" in 35 U.S.C. 154(b)(1)(A)(ii) (which provides an adjustment of patent term if there is delay on the part of the Office to respond within 4 months after an "appeal was taken") means the date on which an appeal brief under § 1.192 (and not a notice of appeal) was filed. Compliance with § 41.37 requires that: 1. the appeal brief fee (§ 41.20(b)(2)) be paid (§ 41.37(a)(2)); and 2. the appeal brief complies with §§ 41.73(c)(i)-(x). See Notice of September 18, 2000, 65 Fed. Reg. 56366, 56385-56387 (Comment 38).

1. Transmitted herewith is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on November 17, 2005.

NOTE: Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.37 CFR 41(a)(1). The brief is no longer required in triplicate. The former alternative time for filing a brief (within the time allowed for reply to the action from which the appeal was taken) has been removed. Appellant must file within two months from the notice of appeal. See Notice of August 12 2004, 69 FR 49960, 49962.

2. STATUS OF APPLICANT

This application is qualified as

- ☐ other than a small entity.
- ☒ a small entity.

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. 1.8(a))

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

- ☒ deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.

FACSIMILE

- ☐ transmitted by facsimile to the Patent and Trademark Office, to (571)-273-8300

12
Date: January 11, 2006

Signature
William R. Evans
(type or print name of person certifying)

3. FEE FOR FILING APPEAL BRIEF

The fee for filing the Appeal Brief is:

- ☒ small entity \$250.00
☐ other than a small entity \$500.00

Appeal Brief fee due \$

4. EXTENSION OF TERM

NOTE: 37 C.F.R. § 1.704(b)". . .an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is three months after the date of mailing or transmission of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. The period, or shortened statutory period, for reply that is sent in the Office action or notice has no effect on the three-month period set forth in this paragraph."

NOTE: The time periods set forth in 37 C.F.R. § 1.192(a) are subject to the provision of § 1.136 for patent applications. 37 C.F.R. § 1.191(d). See also Notice of November 5, 1985. (1060 O.G.27).

NOTE: As the two-month period set in § 1.192(a) for filing an appeal brief is not subject to the six-months maximum period specified in 35 U.S.C § 133, the period for filing an appeal brief may be extended up to seven months. 62 Fed. Reg. 53,131, at 53,156; 1203 O.G. 63, at 84 (Oct. 10, 1997).

The proceedings herein are for a patent application and the provisions of 37 C. F.R. § 1.136 apply.

(complete (a) or (b), as applicable)

- (a) ☐ Applicant petitions for an extension of time under 37 C.F.R. § 1.136 (fees: 37 C.F.R. § 1.17(a)(1)-(5)) for the total number of months checked below:

	<u>Extension (months)</u>	<u>Fee for other than small entity</u>	<u>Fee for small entity</u>
<input type="checkbox"/>	one month	\$120.00	\$60.00
<input type="checkbox"/>	two months	\$450.00	\$225.00
<input type="checkbox"/>	three months	\$1,020.00	\$510.00
<input type="checkbox"/>	four months	\$1,590.00	\$795.00
<input type="checkbox"/>	five months	\$2,160.00	\$1,080.00

Fee: \$ _____

If an additional extension of time is required, please consider this a petition therefor.

(check and complete the next item, if applicable)

- ☐ An extension for _____ months has already been secured, and the fee paid therefor of \$ _____ is deducted from the total fee due for the total months of extension now requested.

Extension fee due with this request \$ _____

or

- (b) ☒ Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee \$ 250.00

Extension fee (if any) \$ _____

6. FEE PAYMENT

- ☒ Attached is a check in the sum of \$ 250.00.
- ☐ Charge Account No. 12-0425 the sum of \$ _____.
A duplicate of this transmittal is attached.

7. FEE DEFICIENCY OR OVERPAYMENT

NOTE: If there is a fee deficiency and there is no authorization to charge an account additional fees are necessary to cover the additional time consumed in making up the original deficiency. If the maximum six-month period has expired before the deficiency is noted and corrected, the application is held abandoned. In those instances where authorization to charge is included, processing delays are encountered in resuming the papers to the PTO Finance Branch in order to apply these charges prior to action on the cases. Authorization to change the deposit account for any fee deficiency should be checked. See the Notice of April 7, 1986, 1065 O.G 31-33.

- ☒ If any additional extension and/or fee is required, this is a request therefor and to charge Account No. 12-0425

AND/OR

- ☒ If any additional fee for claims is required, charge Account No. 12-0425.

AND/OR

- ☒ Credit any overpayment to Account No. 12-0425.

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Date: January 11, 2006


SIGNATURE OF PRACTITIONER

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00140

PATENT TRADEMARK OFFICE



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Goran SUNDHOLM

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Attorney Docket No.: U 014861-2

Commissioner for Patents
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APPEAL BRIEF

The following, in singular, is Appellant's Brief on the Appeal of the Notice of November (17) 21, 2005, from the decision of a Primary Examiner of May 17, 2005, rejecting claims 1-10 for at least the second time.

CERTIFICATE OF MAILING/TRANSMISSION (37 CFR 1.8a)

I hereby certify that this correspondence is, on the date shown below, being:

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FACSIMILE

- ☐ transmitted by facsimile to the Patent and Trademark Office to (571) 273-8300


Signature

Date: January 11, 2006

William R. Evans

(type or print name of person certifying)

REAL PARTY IN INTEREST

The real party in interest is the Assignee of record at Reel 014978, Frame 0411,
Marioff Corporation Oy.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

Claims 1-10 are appealed.

Claims 1-3, 6-8 and 10 are rejected under 35 USC 102(b) as being anticipated by Ohta, et al. US Patent 5,117,918.

Claims 4, 5 and 9 are rejected under 35 USC 103(a) as being unpatentable over the Ohta, et al. US Patent 5,117,918.

STATUS OF AMENDMENTS

An Amendment or Response of August 23, 2005, has overcome the following rejection: rejection under 35 USC 112, second paragraph, according to the Advisory Action of August 31, 2005.

An Amendment or Response of October 14, 2005, "... understood [this] to include the objection to the drawing for not showing a spray head that is part of the fire fighting installation now acknowledged," and the Advisory Action of November 22, 2005, does not contradict this understanding.

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 relates to a fire fighting installation having "... a flow transducer [2, paragraph 0011, original specification page 3, line 32] ... arranged to provide a signal to ... [a] pump unit [5 for the feeding fire-extinguishing medium (e.g., water) through a supply line [3]] if flow of ... gas in the ... supply line [3, paragraph 0017, original specification page 5, lines 12-18] exceeds a predetermined value [paragraph 0014, original specification page 4, lines 30-34]"

Independent claim 8 relates to a drive source of a fire-fighting installation having "... a flow transducer [2, paragraph 0011, original specification page 3, line 32] arranged to provide a signal to the pump unit [5, paragraph 0017, original specification page 5, lines 12-18]"

GROUND OF REJECTION

Claims 1-3, 6-8 and 10 are rejected under 35 USC 102(b) as being anticipated by Ohta, et al. US Patent 5,117,918 and, particularly, by the pressure switch 58 thereof.

Claims 4, 5 and 9 are rejected under 35 USC 103(a) as being unpatentable over the Ohta, et al. US Patent 5,117,918, particularly, by the pressure switch 58 thereof.

ARGUMENT

The Advisory Action of November 22, 2005, acknowledges the Applicant's argument that Ohta, et al. US patent 5,117,916 discloses a pressure switch at column 4, line 12, and column 5, line 8, and not the flow transducer 2 claimed. This is correct and the basis of this appeal.

A pressure switch is not a flow transducer. Therefore, the rejection under 35 USC 102 is traversed.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference *Verdegaal Bros. v. Union Oil Co. of California* . . . (Fed. Cir. 1987) . . . The identical invention must be shown in as complete detail as is contained in the . . . claim. *Richardson v. Suzuki Motor Co.* . . . (Fed. Cir. 1989) MPEP 2131

That a pressure switch is not a flow transducer is suggested by their separate names.

The suggestion is adopted by applicant's lexicography. An applicant may be his own lexicographer (MPEP 2106) and the applicant has availed himself of this by opportunity by differentiating flow transducer 2 from pressure switches in paragraph 0014, for example, of the original specification.

The difference of flow transducer from pressure switch in the lexicography of the application is confirmed in the claims. Original claim 1 recites the flow transducer; original claims 3 and 4 recite the pressure switches. The doctrine of claim differentiation creates a presumption that different claim terms cover different inventions. See, *Laitram Corp. v. Rexnord, Inc.*, 939 F.2d 1533 (Fed. Cir. 1991). The doctrine of claim differentiation states the presumption that the difference between claims is significant. See, *Tandon Corp. v. United States Int'l Trade Comm'n*, 831 F.2d 1017, 4 USPQ2d 1283 (Fed. Cir. 1987).

The lexicography and presumption are supported by sundry definitions of record October 14, 2005. While definitions may not be dispositive, they should be in the complete absence of any contrary evidence, including the affidavit requested under 37 CFR 1.104(d)(2), but not provided.

The words of the claim are generally given their ordinary and customary meaning. The ordinary and customary meaning of a claim term "is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention." *Nystrom v. TREX Co.*, 76 USPQ2d 1481, 1486 (Fed. Cir. 2005) (citation omitted).

In this case, no foundation has been laid to distinguish the ordinary skill in the art. If one ordinarily asks for plumbing pipe pressure, because a tap will not flow on an upper floor, one ordinarily understands that the pressure below is too low but not zero like the flow. One ordinarily understands a difference of pressure from the claimed flow. In this case, therefore, it makes no difference whether definitions or ordinary meaning are used. Both differentiate pressure from flow and, thereby, the claimed transducing thereof.

The rejection under 35 USC 102 should not be converted into one for obviousness under 35 USC 103, nor should the present such rejection be maintained, because the use of flow, as claimed, is not obvious from the use of pressure in the art even though, as stated in the Advisory Action, "...the pressure switch indirectly monitors the flow of fluid out of the system and converts the drop of pressure into an electrical signal." This is because of time. The pressure switch of the art indirectly monitors the flow of fluid only over time. After fluid flows out, pressure drops. Flow comes first, pressure drop second, and second place is not ordinarily thought good enough in fire extinguishing.

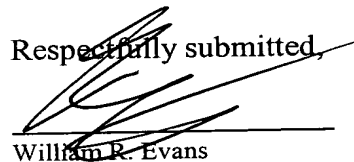
As described in paragraph 0017 of the original specification, but not in the art:

The flow transducer 2 immediately detects the flow of gas and sends a starting signal to the pump unit 5. It should be noted that a pressure transducer is not able to start the pump unit 5, since the pressure in the supply line 3 decreases too slowly.

Those of ordinary skill in the fire prevention art should recognize the benefits of the immediate detection taught only by the claims which, therefore, are not obvious from the art that does not recognize the benefit or how to achieve it.

Reconsideration and allowance are, therefore, requested.

Respectfully submitted,



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CLAIMS APPENDIX

1. (previously presented) In a fire-fighting installation comprising a drive source for feeding medium into at least one spray head, the at least one spray head releasing by impact of heat, and the drive source comprising a pump unit for the feeding of the medium through a supply line, the improvements wherein

at least a portion of the supply line is filled with gas provided with a standby pressure, a gas source maintains the standby pressure, and

a flow transducer is arranged to provide a signal to the pump unit if flow of the gas in the portion of the supply line exceeds a predetermined value.

2. (original) A fire-fighting installation as claimed in claim 1, wherein the spray head is arranged to spray mist.

3. (original) A fire-fighting installation as claimed in claim 1, wherein the gas source is a pressure accumulator connected to said portion of the supply line and which controlled by a first pressure switch attached to the output of the pressure accumulator is arranged to feed gas to the supply line in case the pressure of the supply line drops below a certain first value in order to maintain the standby pressure.

4. (original) A fire-fighting installation as claimed in claim 3, wherein the pressure accumulator is controlled by a second pressure switch associated with the output of the pressure accumulator arranged before starting the pump unit to raise the pressure in the supply line at the most to a certain second value that goes below the pressure in the supply

line caused by the pump unit after having started the pump unit.

5. (original) A fire-fighting installation as claimed in claim 1, wherein the gas in the portion of the supply line and in the pressure accumulator is nitrogen gas.
6. (previously presented) A fire-fighting installation as claimed in claim 1, wherein said medium is water, whereby the pump unit is arranged to feed water into the supply line.
7. (previously presented) A fire-fighting installation as claimed in claim 1, wherein the portion of the supply line is liable to freeze.
8. (previously presented) A drive source of a fire-fighting installation comprising a pump unit for feeding liquid into the fire-fighting installation through a supply line, a portion of the supply line restricted to the fire-fighting installation being filled with gas having a standby pressure, a gas source for maintaining the standby pressure of the supply line and a sensor arranged to provide a signal to start the pump unit in response to a change occurring in the state of the medium in the supply line, wherein the sensor is a flow transducer arranged to provide a signal to the pump unit if flow of the gas in said portion of the supply line exceeds a certain predetermined value.
9. (previously presented) A fire-fighting installation as claimed in claim 5, wherein said medium is water, whereby the pump unit is arranged to feed water into the supply line.

10. (previously presented) A fire-fighting installation as claimed in claim 7, wherein said medium is water, whereby the pump unit is arranged to feed water into the supply line.

EVIDENCE APPENDIX

No evidence has been submitted pursuant to §§ 1.130, 1.131, or 1.132 of title 37.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings.